

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

ANTONY DAVILA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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CV 120-179
(Formerly CR 109-060)

ORDER

Petitioner, previously incarcerated at the federal correctional institution in Jesup, Georgia, filed with this Court a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. On April 15, 2022, the Magistrate Judge issued a Report and Recommendation, (doc. no. 28), recommending denial of Petitioner's motion and directed objections to be filed by May 2, 2022, (doc. no. 29). On May 3, 2022, Petitioner filed a notice of release from incarceration and requests to voluntarily dismiss his § 2255 motion. (Doc. no. 30.)

The Court may grant Petitioner's request to voluntarily dismiss his motion pursuant to Fed. R. Civ. P. 41(a)(2).¹ This Court and other courts have approved the practice of dismissing § 2255 actions without prejudice. See, e.g., Cooks v. United States, CV 114-091, doc. no. 10

¹Under Rule 12 of the Rules Governing Section 2255 Cases, "[t]he Federal Rules of Civil Procedure . . . , to the extent they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules."

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.
2022 MAY 16 P 12:04
CLERK
SO. DIST. OF GA.

(S.D. Ga. Oct. 2, 2014); McGee v. United States, CV 111-192, doc. no. 10 (S.D. Ga. Aug. 17, 2012); see also Weeks v. United States, 382 F. App'x 845, 850 (11th Cir. 2010) (noting dismissal of § 2255 motion without prejudice). Therefore, the Court finds that it is appropriate to dismiss the case pursuant to Petitioner's request.

However, Petitioner should note that, while a subsequent § 2255 motion will not be barred purely by virtue of the dismissal of this action, any future petition for a writ of habeas corpus and/or § 2255 motion that he files will be subject to all statutory provisions applicable to such actions, including those enacted under the Antiterrorism and Effective Death Penalty Act of 1996. See 28 U.S.C. §§ 2244 & 2255. Accordingly, the Court **GRANTS** Petitioner's request to voluntarily dismiss, (doc. no. 30), **DISMISSES** this case without prejudice, **DIRECTS** the **CLERK** to **TERMINATE** all pending motions and deadlines, and **CLOSES** this case.

SO ORDERED this 16 day of May, 2022, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE